

EXHIBIT A
TO
DECLARATION OF MARC GUILFORD

1
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 -----x
5 F.B.T. PRODUCTIONS, LLC,)
6 and EM2M, LLC,)
7 Plaintiffs,)
8 v. Case No. CV 07-03314
9 AFTERMATH RECORDS doing) PSG (MANx)
10 business as AFTERMATH)
11 ENTERTAINMENT; INTERSCOPE)
12 RECORDS; UMG RECORDINGS,)
13 INC., and ARY, INC.,)
14 Defendants.)
15 -----x

16 UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF MICHIGAN
18 SOUTHERN DIVISION
19 -----x
20 EIGHT MILE STYLE, LLC and)
21 MARTIN AFFILIATED, LLC,)
22 Plaintiffs,)
23 vs. Case No. 2:07-cv-13164
24 APPLE COMPUTER, INC. and) Hon. Anna Diggs Taylor
25 AFTERMATH RECORDS d/b/a)
 AFTERMATH ENTERTAINMENT,)
 Defendants.)
15 -----x

16 July 15, 2008
17 10:31 a.m.

18
19 Deposition of MARK A. LEVINSOHN,
20 held at the law offices of Jenner & Block, 919
21 Third Avenue, New York, New York, pursuant to
22 subpoena, before Donald R. DePew, an RPR, CRR and
23 Notary Public within and for the State of
24 New York.
25

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calls for a legal opinion and it calls for a legal conclusion.

A. It is generally a provision contained within a recording agreement that speaks to certain terms that the record company would like to have apply to the mechanical licenses that it obtains in order to manufacture and distribute the recordings by the artist who is being signed to the label pursuant to that recording agreement.

Q. Do controlled composition clauses typically grant a license to use the compositions in those recordings?

MR. BUSCH: Objection to form, lack of foundation, and it calls for a legal conclusion, and it is vague and ambiguous as well.

MR. POMERANTZ: Let me rephrase the question.

Q. Does a controlled composition clause typically grant a license for the compositions?

MR. BUSCH: The same objections

A. In some cases, yes.

Q. Well, you said you have drafted
hundreds of recording agreements. correct?

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12:34:53 2 because in all of those cases the company that I
12:34:59 3 represented also was acquiring the music
12:35:08 4 publishing rights, ownership in the underlying
12:35:12 5 musical compositions from the artist, and also
12:35:23 6 separately from the cowriters or coproducers of
12:35:29 7 that artist's recordings. And as such controlled
12:35:36 8 the ownership and the administration of the
12:35:38 9 publishing rights and would be the party to be
12:35:47 10 able in those cases to grant those licenses.

12:35:55 11 Q. So in those situations why did you have
12:35:57 12 a controlled composition clause in the recording
12:36:00 13 agreement?

12:36:01 14 MR. BUSCH: Note my objection. It
12:36:02 15 calls for a legal conclusion.

12:36:03 16 And with respect to all of these
12:36:05 17 questions -- go ahead.

12:36:07 18 Just note my objection.

12:36:09 19 A. As I've said, the controlled
12:36:12 20 compositions clause established a -- certain
12:36:21 21 conditions and terms, particularly with regard to
12:36:29 22 rates of mechanical royalties and caps on
12:36:35 23 mechanical royalties.

12:36:40 24 Record companies in an attempt to
12:36:42 25 mitigate the costs that they have. relative costs

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12:41:20 2 any of your record company clients in which you
12:41:24 3 believe that the artist granted a license through
12:41:28 4 the controlled composition clause?

12:41:30 5 MR. BUSCH: The same objection, no
12:41:32 6 definition of what type of license you are
12:41:34 7 talking about, whether for digital or for
12:41:36 8 physical. It's vague and ambiguous, it calls
12:41:38 9 for a legal conclusion. I object to the form
12:41:40 10 of the question.

12:41:45 11 A. No.

12:41:46 12 Q. Have you worked on any agreements
12:41:47 13 within the last month?

12:41:49 14 A. No.

12:41:58 15 Q. Have you negotiated and drafted a
12:42:00 16 recording agreement for any of your record company
12:42:03 17 clients in which you believe that the record
12:42:07 18 company agreed to share net receipts on a 50/50
12:42:15 19 basis for permanent downloads?

12:42:18 20 MR. BUSCH: Just note my objection.

12:42:21 21 Object to form. It calls for a legal
12:42:23 22 conclusion. It assumes facts not in
12:42:25 23 evidence, namely that he's made that
12:42:28 24 analysis. And it may also implicate
12:42:30 25 attorney-client privilege to the exten

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18:22:16 2 the attorney work product privilege regarding
18:22:19 3 his mental impressions with respect to any
18:22:22 4 questions you ask about what provisions mean
18:22:25 5 what.

18:22:28 6 So I'm just letting you know,
18:22:30 7 Mr. Pomerantz, to shortcut this. And I'm
18:22:33 8 happy to address this with the court later,
18:22:35 9 if you so choose.

18:22:37 10 But our view of this is that he can
18:22:39 11 testify about what he communicated to
18:22:40 12 Universal. He's already testified about
18:22:43 13 various things that he has said, and actions
18:22:46 14 he has taken, and conversations he has had
18:22:50 15 that are not privileged, and his activities
18:22:59 16 in general.

18:23:00 17 But beyond that, when he gets to his
18:23:02 18 mental opinions and conclusions, we are going
18:23:05 19 to instruct him not to answer. And I ask you
18:23:09 20 to move on.

18:23:12 21 Q. Could you get Exhibit 10 in front of
18:23:14 22 you and turn to page 8.

18:23:26 23 I'm sorry -- yeah, page 8, I'm sorry.
18:23:29 24 Do you see paragraph 6, "Mechanical
18:23:32 25 Royalties"?

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18:23:33 2 . A. Yes.

18:23:33 3 Q. And you see in the first sentence there
18:23:35 4 it states, and I'll delete the parenthetical, "All
18:23:38 5 Controlled Compositions will be licensed to
18:23:41 6 Aftermath and its distributors/licensees," and
18:23:45 7 then it goes on.

18:23:47 8 Do you see that?

18:23:48 9 A. Yes.

18:23:49 10 Q. Have you ever drafted a controlled
18:23:52 11 composition clause which has the language will be
18:23:55 12 licensed in it?

18:23:59 13 A. I don't believe so.

18:24:08 14 Q. Have you ever been involved in
18:24:10 15 negotiating a controlled composition clause which
18:24:12 16 has the language will be licensed in it?

18:24:15 17 A. I don't recall.

18:24:16 18 Q. Have you ever had a conversation with
18:24:17 19 anyone at -- strike that.

18:24:21 20 Have you ever had any conversation with
18:24:24 21 anyone that was involved in the drafting or
18:24:28 22 negotiation of either the 1998 or 2003 agreement
18:24:32 23 about what the phrase will be licensed was
18:24:36 24 intended to mean?

18:24:48 25 A. To the extent Rand Hoffman may have

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18:24:51 2 been involved in the negotiation or the drafting
18:24:53 3 of the 1998 or 2003 agreement, I can testify about
18:25:01 4 conversations that I had with Rand Hoffman.

18:25:06 5 Q. And you've already testified to that
18:25:08 6 conversation, correct?

18:25:12 7 A. It's been a long day and I -- you'll
18:25:15 8 know better than I do whether I have testified
18:25:18 9 about conversations with Rand Hoffman on the
18:25:22 10 mechanical royalties paragraph.

18:25:24 11 Q. Okay. Well, I want to make sure we
18:25:26 12 have a complete record so you don't come into
18:25:28 13 trial and say something different. So I'm going
18:25:30 14 to go back over it since you don't remember your
18:25:32 15 testimony. I do believe we've had some
18:25:35 16 questioning on it, but I may be wrong.

18:25:40 17 Did you have a conversation with
18:25:41 18 Mr. Hoffman about what the phrase will be licensed
18:25:45 19 means in the agreements between F.B.T. and
18:25:50 20 Aftermath?

18:25:53 21 A. The conversation that I had with
18:25:55 22 Mr. Hoffman concerned that Universal knew that
18:26:11 23 Joel believed that the mechanical royalties
18:26:15 24 paragraph did not cover digital reproductions and
18:26:24 25 that Joel objected to the digital distribution of

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18:26:34 2 his song catalogue in the form of digital
18:26:42 3 downloads and other digital distribution.

18:26:47 4 And that with the exception of the
18:26:49 5 Lose Yourself license that he was willing to enter
18:26:54 6 into as an experiment, and with the exception of
18:26:59 7 the mastertones agreement that the paragraph 6,
18:27:05 8 "Mechanical Royalties" paragraph, did not cover
18:27:12 9 digital rights.

18:27:15 10 Q. And you testified that Mr. Hoffman
18:27:17 11 disagreed with you on that, correct?

18:27:18 12 A. Correct.

18:27:27 15 Q. Did you explain to Mr. Hoffman why you
18:27:29 16 thought that the controlled composition clause in
18:27:34 17 the agreements did not apply to digital
18:27:40 18 distribution of the compositions?

18:27:44 19 MR. BUSCH: Just objection to the
18:27:45 20 extent you mischaracterized his testimony.

18:27:47 21 I believe Mr. Levinsohn said he was
18:27:51 22 communicating Joel's position to Mr. Hoffman.

18:27:55 23 Q. Did you explain to Mr. Hoffman why
18:27:57 24 Mr. Martin believed that the controlled
18:28:01 25 composition clause did not apply to the digital